

Kenneth and Cynthia Steeves

v.

Town of Kensington

Docket No.: 25133-09PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$297,900 (land \$163,700; building \$130,500; features \$3,700) on Map 11/Lot 35, 59 Amesbury Road, a single family home on 3.24 acres (the “Property”). (The Taxpayers also own, but are not appealing, a two acre vacant lot assessed at \$152,000, which the parties agreed was proportionally assessed.) For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) an appraisal prepared by Ms. Beverly George (the “George Appraisal”, Taxpayers Exhibit No. 1), a state certified general appraiser, estimated the Property’s April 1, 2009 market value to be \$225,000; and
- (2) the assessment should be based on the George Appraisal’s market value conclusion.

The Town argued the assessment was proper because:

- (1) the George Appraisal is flawed because of errors and inconsistencies and its market value estimate should be given little or no weight;
- (2) the Town’s “Sales Comparisons” (Municipality Exhibit A) supports the assessment; and
- (3) the Taxpayers have not met their burden of proof and no abatement is warranted.

The parties agreed the level of assessment in the Town for tax year 2009 was 113.9%, the median ratio determined by the department of revenue administration.

Board’s Rulings

Based on the evidence, the board finds the Taxpayers failed to meet their burden of proving the Property was disproportionally assessed. The appeal is therefore denied.

The Taxpayers relied entirely on the George Appraisal and her testimony to meet their burden. Ms. George used three comparable sales to estimate the Property’s market value using the sales comparison approach and also estimated the Property’s market value using the cost approach. Ms. George stated in her appraisal she considered the sales comparison approach the most reliable indicator of value with the cost approach being supportive. For the following reasons, the board is unable to place weight on the market value estimate (\$225,000) in the George Appraisal.

The board finds there are some inconsistencies regarding the gross living areas of the Property and the comparable sales relied upon by Ms. George. In the George Appraisal, the gross

living area for the Property is reported to be 1,284 square feet. This measurement is inconsistent with the 1,642 square feet of finished area listed on the multiple listing service (“MLS”) form for the Property when it was listed for sale (for \$329,000) in 2008. (See Municipality Exhibit B.) Further, the Property’s assessment-record card indicates it has 1,966 square feet of “effective” area.

While the effective area produced by the computer assisted mass appraisal (“CAMA”) system reflected on assessment-record cards may include some areas not commonly considered living area, Ms. George used the effective gross living areas indicated on the cards for the comparable sales in her sales grid to estimate the Property’s market value. To be consistent from a fee appraisal standpoint, she should have used the actual, finished, above grade gross living areas for the Property and each of the comparable sales.

For comparable sale #1, Ms. George states the area to be 1,248 square feet in her sales grid. At the hearing, Ms. George testified she knew the owners of comparable sale #1 and the area reported on the sales grid is based on an actual physical measurement. This area conflicts, however, with the area reported on the MLS form for comparable sale #1 when it was listed for sale in late January 2009, approximately two months before the April 1, 2009 assessment date. The board notes the MLS form shown on page 21 of the George Appraisal lists comparable sale #1 as having 832 square feet of finished living area on the first floor and having a “full shed dormer on South side for expansion possibilities to 2nd floor.” If the actual living areas listed on the MLS forms for the Property (1,642 square feet) and comparable sale #1 (832 square feet) are used in the sales comparison grid, a positive \$24,300 adjustment should be made to comparable sale #1 (based on Ms. George’s estimate of \$30 per square foot) to account for the size difference. Making this single adjustment results in a revised indication of market value for the Property based on comparable sale

#1 of \$246,300 ($\$222,000 + \$24,300 = \$246,300$) and an indicated assessment of \$280,500 [$\$246,300 \times 113.9\% = \$280,500$ (rounded)].

The board followed a similar methodology when it reviewed the adjustment for gross living area for comparable sale #2. If the 2,625 square feet of actual finished area reported on the MLS listing form shown on page 26 of the George Appraisal for comparable sale #2 is compared to the Property's 1,642 square feet, a smaller negative adjustment of \$29,490 is necessary rather than the negative \$53,700 shown on the sales comparison grid, a difference of \$24,200, rounded. As a result of this adjustment, the Property's revised market value indication based on comparable sale #2 increases from \$269,000 to \$293,200 and the indicated assessment becomes \$334,000 [$\$293,200 \times 113.9\% = \$334,000$ (rounded)].

Next, the board finds the evidence concerning comparable sale #3 to be inconclusive as to whether or not it was an arm's-length transaction. There was testimony the sellers in that transaction were under duress to sell because one of them (the husband) had moved for employment reasons and they were financing two homes before the sale occurred for a substantial period of time. A sale under duress is not considered reflective of market value. If the market value indication provided by comparable sale #3 is disregarded due to its questionable arm's-length nature, not to mention that a revision to its living area adjustment similar to those made for comparable sales #1 and #2 appears to be necessary, and only the revised market value indications for the Property determined through comparable sales #1 and #2 are used and given equal weight, the resulting market value estimate for the Property is \$269,800 and an assessment of \$307,300 is indicated based on the approach used in the George Appraisal.

Although Ms. George did not place equal weight on the value indication provided by the cost approach in her appraisal, she wrote that she considered it "supportive." The assessment

indicated by her cost approach calculation is \$315,200 [$\$276,749 \times 113.9\% = \$315,200$ (rounded)] which is higher than the Town's assessment (\$292,900) and therefore more supportive of the proportionality of the Town's assessment than the contrary position that an abatement is warranted.

The Town submitted Municipality Exhibit A, a "Sales Comparisons," in support of the current assessment. In this sales analysis, the Town compared the Property to five comparable properties, including two of the three comparables in the George Appraisal, and made what the board finds to be more reasonable adjustments. The Town testified these comparisons indicate the Property is reasonably and fairly assessed, since they show a value range supportive of the equalized market value reflected in the Town's assessment. The board agrees.

For all of these reasons, the board finds the Taxpayers did not meet their burden of proving the Property was disproportionately assessed. Therefore, the appeal is denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; Tax 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(g). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Kenneth and Cynthia Steeves, 59 Amesbury Road, Kensington, NH 03833, Taxpayers; Chairman, Board of Selectmen, Town of Kensington, 95 Amesbury Road, Kensington, NH 03833; and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: November 23, 2011

Anne M. Stelmach, Clerk